



In the Matter of)	
)	WC Docket No. 21-93
Emergency Connectivity Fund for)	DA 21-317
Educational Connections and)	
Devices to Address the Homework)	
Gap During the Pandemic)	
Petitions for Emergency Relief to)	
Allow the Use of E-rate Funds to)	
Support Remote Learning During)	WC Docket No. 21-31
the COVID-19 Pandemic;)	
Addressing the Homework Gap)	
Through the E-rate Program)	

**Reply Comments
of the
South Dakota Department of Education**

South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501
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<https://doe.sd.gov/>

I. Introduction

The South Dakota Department of Education (SD DOE) submits these Reply Comments to address the questions and proposals that the Federal Communication Commission (FCC) raised in its Emergency Connectivity Fund (ECF) Public Notice DA 21-317 released March 16, 2021¹ and to associate with the initial comments of other parties that we support and to explain why we have a differing viewpoint from other initial comments.

II. Applicant Funding Caps That Incorporate the Higher Connectivity Costs in Rural Areas as Proposed by SECA Should Be Adopted as the Primary Means of Ensuring Reasonable Expenditures.

Of the different options mentioned in the ECF Public Notice for determining the reasonableness of expenditures, SD DOE supports establishing funding caps similar to the Category 2 budget approach for schools and libraries. We believe that this method ensures that funds will be available for all applicants and will be equitably distributed. If there are funds remaining after the initial round of applications are processed, another round of applications could be accepted and processed until all funds were spent.

The other “reasonableness” options in the ECF Public Notice unfairly favor the highest discount applicants and/or the largest applicants. Using the priority method of funding the highest discount applicants until all funds are expended puts lower discount applicants at risk and creates uncertainty of not being funded if the highest discount applicants’ demand exceeds the available funds. This approach would frustrate the

¹ “Wireline Competition Bureau Seeks Comment on Emergency Connectivity Fund for Educational Connections and Devices to Address the Homework Gap During the Pandemic, WC Docket No. 21-93, DA 21-317 (released March 16, 2021) (“ECF Public Notice”).

Congressional intent of authorizing the reimbursement of 100% of reasonable costs for **all** qualifying schools and libraries and would provide financial relief to a subset of those entities.

Based on historical experience with the administration of the Priority 2 funding system, pre-dating the Category 2 budgets, funding was available regularly only to the first or second band of highest discount applicants. In our State, there are only 10 districts with the maximum discount. Their combined enrollment is 8,058, students which is 5.2% of the total K-12 student enrollment of 154,010. Another 16 districts have a discount of 80% with a combined enrollment of 7,526 students, which is about 4.8% of the statewide enrollment.

In total, based on historical funding experience of the old Priority 2 system, there are 26 districts with the two highest discount percentages representing 15,584 students or just 10% of the total statewide enrollment that would have a realistic chance of obtaining ECF funding, unless there is some restraint imposed on all applicants' funding requests. This is why we support applicant funding caps since that system has been successful in the Category 2 part of the E-rate program for allowing all applicants to receive a share of available funds.

Another option mentioned in the ECF Public Notice, in lieu of applicant funding caps, would be to calculate the total demand and create a percentage reduction by dividing total demand by total available funds, if necessary. The percentage reduction would be applied evenly to all applicants. This approach still favors higher discount applicants as well as larger applicants whose funding requests are larger than smaller and lower discount applicants. The higher discount and larger applicants would still

receive a disproportionate amount of the ECF money. This approach also encourages applicants to maximize their funding requests in the hopes that they would receive as much as possible, even after experiencing a percentage reduction if demand exceeds available funding. This would undermine efforts to ensure that reimbursements are authorized for *reasonable* costs as the statute requires.

We prefer applicant funding caps as the preferable and most equitable approach to ensure the reasonableness of costs and to ensure that the benefits of the ECF program are experienced by all eligible schools and libraries equally. We also believe that funding caps allow applicants to have needed flexibility to meet the needs of their local students, staff and in the case of libraries, their patrons in the community.

With respect to determining an appropriate methodology for calculating school budgets, SD DOE supports the State E-rate Coordinators' Alliance (SECA) proposal that would allocate \$100.00 per urban student and \$150.00 per rural student for schools. First and most importantly, allocating an additional 50% to the per-student multiplier for rural students reflects the reality that the costs of obtaining broadband service are higher in rural areas of the country. Second are the benefits of being easy to understand, easy to calculate, and easy to administer. Third, all applicants are assured of knowing that they can obtain reimbursement of 100% of their budgeted costs for eligible purchases without worry or concern that there will not be enough money to fund those purchases.

SD DOE has computed the budgets for its 149 public school districts using the SECA parameters, as shown in Exhibit A to these Reply Comments. The budgets would range from \$2,100 for the smallest district, Elk Mountain, which has 14 students,

to \$2.4 million for our largest district, Sioux Falls, that has 24,542 students. South Dakota's public school students would receive \$18.69 million of the \$7.17 billion of ECF money, or 0.26%.

In comparison, SD DOE also evaluated the Funds for Learning and E-rate Central suggestion that the funding caps also incorporate the E-rate discount percentage of each school and allocate a greater per-student multiplier based on the E-rate discount matrix. Funds for Learning posited that this approach reflects that poorer districts have a greater number of unconnected learners and teachers; therefore, they have a greater need and should receive relatively more funding than lower discount schools and districts.² We calculated the South Dakota public school budgets using this model, which would result in \$13.79 million, which is \$4.9 million less than the SECA proposal, and would equate to 0.19% of the total amount of funding.

We have other concerns with the Funds for Learning proposal that go beyond the fact that it would allocate less money to South Dakota's school. First, we disagree with the premise that funds should be targeted to the schools with the highest National School Lunch Program (NSLP) percentages since this is indicative of higher numbers of unconnected students. The ECF statute authorizes qualifying purchases of services and connected devices for **all** students, not just those that are under-connected or unconnected and not just low-income students. Certainly, we do not foresee districts

² The 2017 GAO report states that students in lower income households are more likely to lack in-home Internet access than students in higher income families. See Funds for Learning Initial Comments at page, 5, citing U.S. Gov't Accountability Office, GAO-19-564, FCC Should Assess Making Off-School Premises Access Eligible for Additional Federal Support 23 (July 2019), <https://www.gao.gov/assets/710/700629.pdf>

paying for connectivity when a family already has sufficient broadband internet at home, but districts may still need to purchase a connected device for such students and/or may need to augment the family's internet connectivity to ensure sufficient bandwidth is available for the student learners. For example, there may be multiple students in the household and the bandwidth needs of the existing internet service may be insufficient to allow all the student learners to be online simultaneously. There may be other households that experienced a temporary reduction in income such that the family may not qualify as low-income but may need the financial assistance of the ECF program to ensure continuous broadband availability at home. There may be a myriad of local and unique circumstances where a district may need or wish to use ECF money to purchase qualifying equipment or services for a student not technically designated as "low-income."

Second, the Funds for Learning methodology is in essence applying the discount matrix rather than using the statutory 100% reimbursement instruction. There is virtually no difference between calculating each district's budget using the \$157 per student multiplier, to arrive at their prediscount cost, but then discounting the reimbursement amount by the district's E-rate discount. The methodology of applying the discount first to arrive at the district's budget does not change the fact that the amount being reimbursed for districts with a higher E-rate discount is greater than the amounts that would be reimbursed for lower discount districts.

Third, by continuing to rely on the discount matrix for allocating funding, the method fails to account for higher rural costs for those entities with a NSLP percentage

of 50%. In the discount matrix, these entities receive the same discount percentage regardless of whether they are a rural or urban entity.

And finally, we applied the Funds for Learning methodology to different estimates of student learners in South Dakota that lack sufficient broadband at home, in order to determine whether the methodology does produce a higher allocation amount per **unconnected student** in the highest discount districts.

Exhibit A to these Reply Comments reflect the following calculations:

- The total amount of each district's budget using the Funds for Learning formula. Each district's E-rate discount number of enrolled students based on existing E-rate records were used. We also calculated the number of NSLP students based on each district's NSLP percentage.
- We used the most recent American Community Survey data from 2019 that reports 24% of the total households (including all income levels) lack sufficient broadband internet at home.³ While this assumes the distribution of the number of unconnected students is the same throughout the state rather than being concentrated in the higher discount districts, we opted to use this figure as the best available state data. We multiplied 24% by total student enrollment to arrive at the proxy number of unconnected students (those lacking sufficient broadband internet at home).
- Funds for Learning's budgets produced an amount per unconnected student ranging from \$163.54 to \$556.04. The higher per-student amounts were for higher discount districts. The cost of connecting each student does not vary according to the poverty level of the district, however. In comparison the SECA method would produce a per-unconnected student amount of \$625.00 for all rural districts and \$416.67 for all urban districts. The cost would be the same for all districts regardless of their E-rate discount percentage or NSLP percentage with the only variance related to whether the district is an urban or rural district.

³ See Table B28002 of the 2019 American Community Survey for South Dakota. There are 353,799 households in the data set. There are 248,803 households with cable, fiber optic or DSL internet service and 19,823 households with satellite service. We did not include the households relying on cellular data as their internet service since this is consistent with the ECF Public Notice that states that smartphones are not considered a "connected device." The total number of households with broadband internet are 268,626, or 24% of the total number of households.

We also performed calculations based on the **percentage of low-income students** that are estimated to be unconnected. These results were inconsistent and therefore inconclusive. We performed the following calculations:

- The total amount of each district's budget using the Funds for Learning formula. Each district's E-rate discount number of enrolled students based on existing E-rate records were used. We also calculated the number of NSLP students based on each district's NSLP percentage.
- We used the 2018 Pew Research data from a survey that indicated that nationwide, 24% of low-income teens lacked an adequate computer or internet at home to complete homework assignments. Since districts with the highest discounts have the greatest number of NSLP students, we therefore used this as a proxy for estimating the number of low-income students without sufficient broadband internet at home. We then divided by the Funds for Learning total district budget by the number of unconnected students to arrive at the per-student amount for each low-income unconnected student.
- Funds for Learning's budgets produced an amount per low-income unconnected student ranging from \$549.50 to \$4,672.62; however, the highest discount districts and highest NSLP percentage districts **did not** receive more funding per low-income unconnected student than the lower NSLP percentage/lower discount districts. For example, districts with an 80% discount would receive more funding per low-income unconnected student than districts with an 85% discount and districts with a 50% discount would receive more funding per low-income unconnected student than districts with higher discounts.

Thus, it appears that Funds for Learning methodology does not produce a more reasonable or equitable result than the SECA methodology. It does not seem to direct more money to those districts with the greatest need. For this reason, too, we support the SECA methodology for setting applicant budgets.

III. Applicants Have Made Reasonable Purchasing Decisions to Date and Will Continue to Do So Without Requiring Federal Competitive Bidding.

We support the proposal in the ECF Public Notice to require certification of compliance with state, tribal or local procurement requirements for reimbursements of

purchases made to date. We also believe that this certification should govern requests for funding of prospective purchases and is sufficient to ensure that the prices paid and to be paid are reasonable. We agree with the numerous commenters that do not support requiring any mandatory ECF competitive bidding requirement as a prerequisite for applying for funding.⁴

The advantage of using applicant budget caps is that there is a built-in incentive for applicants to make prudent purchases so that the limited funds are used efficiently. Also, all schools and libraries have governing boards with the responsibility to ensure sound financial oversight. Public school districts in South Dakota also are required to be audited at least every two years.⁵ In addition, school districts and other nonprofit entities such as private schools that receive \$750,000 annually in federal funds must be subject to a “single audit” pursuant to 2 C.F.R. Part 200. In addition, SD DOE concurs that the audit requirements governing the traditional E-rate program should govern the disbursement of ECF money, consistent with the suggestion in the ECF Public Notice.

Requiring an E-rate competitive bidding would be unnecessary and burdensome. Most of the equipment and services eligible under ECF are well known to school and library technology personnel. They are aware of the service options and associated prices in their areas and also are aware of the needs of their users for connected devices. Many schools have already conducted extensive research and determined the

⁴ See, e.g., Wisconsin Department of Public Instruction Comments in WC Docket No. 21-3, <https://www.fcc.gov/ecfs/filing/10318978622013>; Schools, Health & Libraries Broadband (SHLB) Coalition Initial Comments, p. 3, <https://www.fcc.gov/ecfs/filing/104060179212275>.

⁵ SDCL 4-11-7.1. “A school district shall have financial and compliance audits performed at least every two years. The audits shall be performed in accordance with generally accepted governmental auditing standards. The audits may be done by the Department of Legislative Audit or by a private firm authorized by law to audit the financial records of school districts.”

appropriate feature set and technology they want to purchase and are able to support. Going out for bid on these devices and requiring them to review all the available equipment and service options will likely not change their ultimate decision concerning the most cost-effective choice for them, and at the same time, it would introduce another layer of confusion and bureaucracy, and create potential administrative points of failure that could result in funding denials.⁶ In light of the emergency circumstances underlying the enactment of this law, and the fact that the law itself does not require bidding, we urge the FCC to recognize that bidding at the federal level by posting a FCC Form 470 should not be mandatory. If a school or library wishes to post an FCC Form 470, they should be permitted to do so, but it should not be required. This is also consistent with the way in which the FCC implemented the emergency Telehealth program in both its initial phase and its second phase.⁷ The FCC recognized that the application process should be streamlined so that the funds could be disbursed and put to good use as quickly as possible. In its April 2, 2020, Telehealth Report and Order, the FCC stated:

As detailed above, the COVID-19 Telehealth Program is funded through a congressional appropriation and not the USF. Given the immediate need to award and disburse the COVID-19 Telehealth Program funding to health care providers, we will not require COVID-19 Telehealth Program participants to conduct a competitive bidding process to solicit and select eligible services or devices, or otherwise comply with the competitive bidding requirements that apply to the RHC Program and the

⁶ Applicants in the traditional E-rate program are subject to funding denials when they fail to complete the form correctly due to misunderstanding the instructions and not posting their service and equipment requests correctly.

⁷ *Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program*, WC Docket Nos. 18-213, 20-89, Report and Order, FCC 20-44 35 FCC Rcd 3366 (2020) (First COVID-19 Report and Order). *COVID-19 Telehealth Program*, WC Docket No. 20-89, Report and Order, FCC 21-24 (Feb. 2, 2021) (USAC Delegation Order) at ¶31 (footnotes omitted); *COVID-19 Telehealth Program, Promoting Telehealth for Low-Income Consumers*, WC Docket Nos. 20-89, 18-213, Report and Order and Order on Reconsideration, FCC 21-39 (March 30, 2021) (Second COVID-19 Telehealth Report and Order).

broader Connected Care Pilot Program. We find that, in light of the coronavirus pandemic and ongoing community efforts to slow its spread, requiring COVID-19 Telehealth Program participants to seek competitive bids prior to requesting funding would cause unnecessary delays and pose an unreasonable burden on health care providers during this unprecedented time. Because we recognize the importance of connected care services during this pandemic, we do not believe that the public interest would be served by requiring health care providers to follow the competitive bidding requirements that we have traditionally required for the RHC Program, including submitting Request for Services and Request for Proposals (RFP) (as applicable) to USAC to post on its website, seeking bids, waiting 28 days before selecting a service provider, conducting a bid evaluation to select a service provider, and then selecting the most-cost effective service prior to providing essential health care support to patients.

This same rationale applies equally to the ECF program, and we hope that the FCC will agree that the same policy should govern here. The urgent need for assuring that all student learners and teachers have sufficient internet connectivity and adequate connected devices is also compelling. We need to ensure that students are able to receive direct teacher instruction and to complete their assignments whether during the day or after school and whether the student is inside the bricks and mortar school building or is learning remotely. Research is already beginning to surface about the adverse effects of the pandemic on student learning.⁸

For all these reasons, we request that the FCC dispense with any mandatory federal competitive bidding requirement.

⁸ See, e.g., "COVID-19 and learning loss—disparities grow and students need help," (December 8, 2020); <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help#>.

IV. The Use of E-rate Funded Internet Service Delivered to School and Library Buildings Should Be Permitted to Be Used Off-Campus Without Any Financial Consequence to E-rate Applicants.

E-rate funding is already being used to pay for on-campus internet connectivity to schools and libraries. The current rules prohibit the use of this service if the user is off-campus. If the service is allowed to be used off-campus, the applicant must ensure that E-rate does not pay for the associated costs. This typically involves a complex set of cost-allocation requirements that results in a modest or de minimis reduction of a funding request or request for reimbursement if the cost allocation is performed after the funding commitment is issued.

SD DOE understands the need for bright line rules, but we believe that this rule, which is based on the statutory interpretation that eligible schools or libraries can receive and use E-rate funded services, is outdated and no longer reflects the current definition of school and education. Education is occurring both on campus and off campus, whether a school is closed due to the pandemic or whether the school is open, and students are performing their homework and schoolwork at home or other off-campus locations. The internet has redefined the concept of a classroom and how education is delivered.

The ECF program was created in recognition of the need to ensure students, teachers and library patrons have online access from their homes and other off-campus locations for educational purposes. Since internet is already available on-campus, and may be available to be accessed off campus, SD DOE believes that the off-campus internet prohibition must be removed along with the requirement to cost-allocate off-campus usage. This would have the effect of allowing another resource to be made

available as a means of providing connectivity that could be accessed by students and teachers off-campus. To be clear, we are not advocating that ECF money should be used to construct new networks, procure dark fiber or to build self-provisioned networks. What we are suggesting, though, is that if a school or library wishes to install Wi-Fi hotspots that utilize their E-rate funded internet service, they should be permitted to do so without having to purchase separate internet service that is outside of the traditional E-rate program – just to avoid the off-campus prohibition.

We believe that safeguards similar to the on-campus community usage provisions can be enacted to ensure that the off-campus use of E-rate funded internet does not result in higher cost and larger quantities of internet being purchased. Schools must not be allowed to charge for the use of the internet, and access must be restricted to students and staff. The amount of internet requested for E-rate funding must be limited to the amount needed for on-campus use so that the off-campus usage is incidental.

V. Conclusion

The South Dakota Department of Education respectfully requests the FCC to consider our reply comments and to adopt an order consistent with our recommendations.

Respectfully submitted,



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